

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 192**

The question is whether Mr. X, a former City employee, violated Section 11-105, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH], relating to post City employment, as a result of his activities concerning development near a scenic tract of land [the Tract].

In general, the Ethics Commission [Commission] believes that Mr. X should not have worked for compensation within a year of termination of his City employment concerning development near the Tract because his City duties had related to such development. However, the Commission does not conclude that Mr. X violated Section 11-105, RCH, because as written this standard of conduct is ambiguous and does not give City personnel notice of what activities constitute a violation. Therefore, the Commission is issuing *Guidelines on Post Employment Restrictions* to all City agencies, and activities may constitute a violation of Section 11-105, RCH, only if they occur after such distribution.

The Commission understands the facts to be as follows:

Between 198- and 198-, Mr. X was senior aide to Y, a member of the City Council [Council]. His official duties included monitoring information concerning a sewage treatment plant near the Tract and attending neighborhood meetings on behalf of Councilmember Y concerning the building of homes near the Tract. Mr. X also discussed such building with members of the Council and their staffs.

The question of building homes near the Tract was before the Council because ABC Development Co. [the Developer] had submitted to the Council an application for a Shoreline Management Permit [SMP], which would allow such building.

Within three months of leaving City employment on (date), Mr. X appeared before the Council in opposition to the SMP application. He did so as a private citizen and not for compensation. The Council granted the SMP on (date).

After the Council's approval of the SMP, Mr. X became active in the founding, organization, and activities of Citizens Opposed to Development at the Tract [CODAT], which is a nonprofit organization. CODAT's activities include law suits challenging the validity of the SMP.

CODAT paid Mr. X (amount) for coordinating CODAT's activities less than a year after termination of Mr. X's City employment.

The questions presented are:

- I. Whether assistance related to official City action is an implicit element of Section 11-105, RCH; and
- II. Whether Mr. X's official duties as senior aide to Councilmember Y and his paid activities on behalf of CODAT are part of the general subject matter of development near the Tract.

Each of these questions is presented separately.

**I. The Elements of Section 11-105, RCH - Whether assistance related to official City action is an implicit element of Section 11-105, RCH.**

The general rule appears in Section 11-105, RCH, which states as follows:

Future Employment -- [1] No person who has served as an elected or appointed officer or employee of the city shall, [2] within a period of one year after termination of such service or employment, [3] [a] appear [4] for compensation before any agency of the city, or [4] receive compensation for [3] [b] any services rendered in behalf of any private interests [5] **in relation to any case, proceeding or application [a] with respect to which such person was directly concerned, or [b] which was under such person's active consideration, or [c] with respect to which knowledge or information was made available to such person during the period of said service or employment.**

(Bracketed material and emphasis added) The bracketed numbers designate the explicit elements of this section. The bracketed letters designate alternative bases of an element. The underscored material, the fifth element, applies to each of the alternative bases of the third element.

The Commission believes assistance related to official City action is not an implicit element of Section 11-105, RCH. The City has two standards of conduct relating to post City employment, Section 6-1.3, Revised Ordinances of Honolulu 1978 (1983 Ed.) [ROH], and Section 11-105, RCH. The Commission believes these standards prohibit, in part, different activities. The purpose of Section 6-1.3(a)(2), ROH, is to prohibit former City personnel from trying to peddle their influence with current City personnel for compensation within a year after termination of their City service or employment. Thus, assistance related to official City action is an explicit element of this standard, which states in pertinent part as follows:

Except as hereinafter provided, no former officer or employee of the City shall for compensation and within a period of one year after termination of service or employment ... **[a]ssist** another person or business, including the one of which he is an officer or employee, in **any official act or action** by the City in which such

former City officer or employee at any time participated during his City employment ....

(Emphasis added) In contrast, a purpose of Section 11-105, RCH, is to prohibit former City personnel from using inside information for compensation within a year after termination of their City service or employment. Hence, assistance on behalf of private interests related to official City action is not an implicit element of this standard. Therefore, the elements enumerated in brackets solely comprise Section 11-105, RCH.

In light of these elements and the facts as stated herein, neither Mr. X nor the Developer disputes that [1] Mr. X, who was senior aide to Councilmember Y, [2] terminated City employment (date), and in (month) through (month) 198-, less than a year after such termination, [3] received compensation in the amount of (\$amount) [4] for services rendered on behalf of a private interest, CODAT.

The remaining question is as follows.

**II. The Subject Matter of Mr. X's Official Duties and Post City Employment - Whether Mr. X's official duties as senior aide to Councilmember Y and his paid activities on behalf of CODAT are part of the general subject matter of development near the Tract.**

The general rule is that under Section 6-1.3(a), RCH, the phrase "case, proceeding or application" should be construed broadly to mean matter. The Commission established this rule in Advisory Opinion No. 155 [AO #155], a copy of which is enclosed. In that case, a former City employee supervised City personnel who directly considered an application to develop a parcel of land. Within a year after termination of City employment, the employee appeared before a City agency on behalf of the same company and a new application to develop the same parcel of land. The Commission concluded that the former employee's City duties and post City employment both related to the same subject matter, the development of the parcel of land. Therefore, the former employee should not have appeared on behalf of the company.

The Commission believes the phrase "case, proceeding or application" in Section 11-105, RCH, should also be construed broadly to mean subject matter. In light of this construction, the Commission rejects the notion that Mr. X's official duties and his subsequent activities on behalf of CODAT were not related. The subject matter in this case is development near the Tract. This subject matter encompasses both Mr. X's duties as a senior aide and his activities on behalf of CODAT. His duties as senior aide concerned the sewage treatment plant near the Tract and neighborhood meetings about the Developer's proposed development near the Tract. The operation and capacity of the plant relates directly to proposed development because residential development requires sewage disposal. The neighborhood meetings were a forum for public opinion concerning the Developer's plans to build homes near the Tract. For their part, CODAT had and has as its goal to stop development near the Tract. The SMP was the Council's approval of development, and the Coalition's petition was one of several attempts to stop development. When Mr. X was paid for coordinating CODAT's activities, he was paid for activities directly related to development near the Tract, a subject of his official duties. Therefore, Mr. X should

not have assisted, for compensation, CODAT until (date), one year after termination of his City employment.

The Commission does not, however, conclude that Mr. X violated Section 11-105, RCH. The ambiguity of whether this standard is designed to prohibit the use of insider information or to prohibit influence peddling, as discussed in the first section of this opinion, is sufficient for a former City officer or employee, such as Mr. X, to reasonably believe that his post City employment was not in violation of this standard of conduct. Although Mr. X did not seek the Commission's advice on this matter as he should have, the Commission will not conclude that a violation has occurred until current and former City personnel have notice of the Commission's interpretation and application of Section 11-105, RCH. Therefore, the Commission has issued *Guidelines on Post Employment Restrictions* to all City agencies and former personnel whose post employment activities have come to the Commission's attention.

In conclusion, the Commission has been asked to determine whether Mr. X violated Section 11-105, RCH, relating to post City employment, as a result of his activities on behalf of CODAT. The Commission believes this standard of conduct prohibits the kind of activities for which Mr. X received compensation. However, Section 11-105, RCH, could reasonably be interpreted to prohibit activities related to the use of inside information or to attempts to influence official City action. Given this ambiguity, the Commission will not conclude that any former City personnel have violated this standard of conduct until this construction has been publicized through distribution of *Guidelines on Post Employment Restrictions*.

Dated: December 8, 1988

JANE B. FELLMETH  
Chair, Ethics Commission